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July 16, 1999

VIA HAND DELIVERY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37201

Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee*  
Docket No. 98-00559

Dear Mr. Waddell:

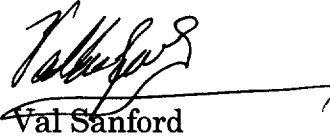
Enclosed for filing are the original and thirteen copies of the Response of AT&T Communications of the South Central States, Inc. to BellSouth Telecommunications, Inc.'s Data Requests concerning CSA KY98-4958-00 and CSA TN98-2766-00.

Also enclosed in a separate envelope, that is labeled with the style of the proceeding and contains the legend "Confidential – Subject to Protective Order," and which includes AT&T's response to Request 12(b), which request calls for and, therefore, includes discussion of the specific terms of the "termination liability" provisions of the two CSAs. That discussion appears to include information which is "Confidential" under the Protective Order, and, therefore, should be filed as provided in the Protective Order.

David Waddell  
July 16, 1999  
Page 2

Copies are being served on counsel of record.

Yours very truly,



Val Sanford

VS/ghc  
Enclosures

cc: Guy M. Hicks, Esq.  
Richard Collier, Esq.  
Henry Walker, Esq.  
Charles B. Welch, Jr., Esq.  
Vance Broemel, Esq.  
Carolyn Tatum Roddy, Esq.  
James P. Lamoureux, Esq.  
Garry Sharp (except for documents under seal)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:        PROCEEDING FOR THE PURPOSE OF ADDRESSING  
              COMPETITIVE EFFECTS OF CONTRACT SERVICE  
              ARRANGEMENTS FILED BY BELL SOUTH  
              TELECOMMUNICATIONS, INC. IN TENNESSEE**

**Docket No. 98-00559**

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**RESPONSES OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL  
STATES, INC. TO BELL SOUTH TELECOMMUNICATIONS, INC.'S  
DATA REQUESTS CONCERNING CSA KY98-4958-00 AND CSA TN98-2766-00**

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AT&T Communications of the South Central States, Inc. ("AT&T") hereby responds to the data requests served by BellSouth Telecommunications, Inc. ("BST") regarding CSA KY98-4958-00 and CSA TN98-2766-00.

**GENERAL OBJECTION**

AT&T objects to the "instructions" which precede BST's requests to the extent that instruction (b),(d) and (e) are beyond the scope authorized by any statute or rule. AT&T further objects to the definition in (h) which refers to federal law on the ground that this is a proceeding under the law of Tennessee.

1.        Identify each person participating in the preparation of the answers to these data requests or supplying information used in connection therewith, and explain with particularity each person's relationship, if any, to AT&T.

**RESPONSE:**        James P. Lamoureux and Val Sanford, attorneys for AT&T.

2. Do you contend that either BellSouth Contract Service Arrangement KY98-4958-00 or TN 98-2766-00 is anticompetitive? If so, please:

(a) identify the specific terms, conditions, or provisions of the CSA which you contend are anticompetitive, if any;

(b) state all facts which support your contention that the CSA or any terms, conditions, or provisions contained therein are anticompetitive; and

(c) identify and produce all documents which support your contention that the CSA or any terms, conditions, or provisions contained therein is anticompetitive.

**RESPONSE:** Yes. AT&T contends that BellSouth's Contract Service Arrangement KY98-4958-00 and TN98-2766-00 are anticompetitive.

(a) The provisions governing the term of the CSAs; termination liability, termination for cause and the penalties to be paid on termination; regulatory considerations; provisions for discounting additional and new services; acquisition of new businesses; business changes; and the basic structure and purpose of the CSAs.

(b) BST had, and still has, an effective monopoly over the provision of local exchange services in the territories in Tennessee which it serves. The programs which BST has followed with respect to special contracts with its larger Tennessee customers, including particularly the use of master service agreements and volume and term agreements, reflect an effort by BST to forestall and prevent the development of competition in the provision of local exchange services in Tennessee. The volume and term agreements entered into by BST with the two customers in the subject CSAs

illustrate the implementation of those programs and purpose. BST's basic purpose is to lock these customers into an exclusive arrangement with BST.

(c) In addition to the two subject CSAs and BST's tariffs, AT&T identifies the following documents as produced by BST, identified by the Bates stamped number of each document:

000083	000210 – 000223
001184	002207
000002	000003
000006	000009 – 000011
000014 – 000015	000021
000022	000025
000026	000034
000035	000043
000044	000048
000050 – 000051	000053
000056	000057 – 000058
000059	000061 – 000062
000066 – 000067	000068 – 000069
000074	000075
000076	000077
000078	000083
000089	000094 – 000095
000097	000101
000102	000106
000107 – 000108	000110
000112 – 000116	000117 – 000144
000145 – 000150	000151 – 000168
000181	000189 – 000209, 000224 – 000225
000227 – 000238	000307 – 000309
000597 – 000598	000600 – 000601
000605	000615
000616 – 000617	000622 - 000623
000627	000630
000634	000636
000645	000649 – 000669
000670	000671 – 000672
000673 – 000674	000684
000718	000719 – 000720
000759	000858 – 000859
000915 – 000918	000930 – 000931

000940A	000941
000942 – 000943	000944 – 000957
000958 – 000967	000968 – 000981
000991	000996 – 000997
001004 – 001005	001051 – 001052
001055 – 001056	001074 – 001081
001083 – 001090	001092 – 001103
001104 – 001108	001122 – 001128
001137	001181 – 001183
001193 – 00194	001200 – 001201
001348 – 001349	001365 – 001386
001529 – 001530	001547 – 001552
001564 – 001567	001659 – 001679
001680 – 001685	001698 – 001720
001725 – 001759	001765 – 001792
002202 – 002206, 002208	002370
002385	002494
002495	002541

All the foregoing documents are BST documents, within its possession, custody and control.

3. Do you contend that either BellSouth Contract Service Arrangement KY98-4958-00 or TN98-2766-00 violates state or federal law? If so, please:

(a) identify specifically all state or federal laws you contend each such CSA violates;

(b) identify the terms, conditions, or provisions of the CSA which you contend violates each state or federal law identified in response to (a) above, if any;

(c) state all facts which support your contention that the CSA or any terms, conditions, or provisions contained therein violates state or federal law; and

(d) identify and produce all documents which support your contention that the CSA or any terms, conditions, or provisions contained therein violates state or federal law.

**RESPONSE:** Yes.

(a) The subject CSAs violate T.C.A. §§65-5-208(c), 65-5-204(1) and (2), 65-4-115 and 65-4-122(a) and (c), and 65-4-123. Whether the subject CSAs may or may not violate any provision of federal law is not within the subject matter of this proceeding, and AT&T objects to this “data request” insofar as it relates to federal law.

(b) As to anticompetitive practices (T.C.A. §§65-5-208(c) and 65-4-123) see No. 2(a) above. As to statutes prohibiting undue discrimination or preference, the extensive number of CSAs entered into by BST and the basic nature of those CSAs, including the subject CSAs, indicate an intent, and a practice, to depart from the general provisions of a regulatory system based on general tariffs applicable to all alike. For example, the subject CSAs are based on a system of “Discount Eligible Services” defined somewhat differently in the two CSAs. The “Discount Eligible Services” are covered by BST’s tariffs. These CSAs provide for discounts off the existing tariff rates. Thus, like services are priced differently in the subject CSAs, which also differ by definition from the tariff rates for these services. Likewise, the terms and conditions of these two CSAs differ, both from each other and from BST’s tariffs. No valid, reasonable basis exists for such widespread, extensive differences. BST is using its market power in these CSAs to follow a system of individual rates, terms and conditions, which discriminate against other customers, including other customers under CSAs, and to prefer some customers over other customers, for like services, without any valid, reasonable basis for such discrimination or preference. The basic purpose of BST’s unduly discriminatory and preferential practices with respect to these and other CSAs is to attempt to lock its larger customers into its services excluding competition.

(c) See Response to (b) above.

(d) See Response to 2(c) above.

4. Do you contend that either BellSouth Contract Service Arrangement KY98-4958-00 or TN98-2766-00 violates any Authority rules? If so, please:

(a) identify specifically each Authority rule you contend each such CSA violates;

(b) identify the terms, conditions, or provisions of the CSA which you contend violates each Authority rule identified in response to (a) above, if any;

(c) state all facts which support your contention that the CSA or any terms, conditions, or provisions contained therein violates any Authority rule; and

(d) identify and produce all documents which support your contention that the CSA or any terms, conditions, or provisions contained therein violates any Authority rule.

**RESPONSE:** Yes.

(a) The intent of Rules 1220-4-1-.03 governing "tariff contents" and 1220-4-1-.07 governing "special contracts."

(b) Rule 1220-4-1-.03 is designed to implement the long standing policy of requiring published, i.e., open to the public, tariffs, applicable to all alike under similar circumstances, which policy is the basic regulatory tool for prohibiting undue discrimination or preference. "Special Contracts" are exceptions to that general policy. The number of CSAs adopted by BST, in the context of its market power, are an attempt to turn the exception into a general rule for its larger customers. Thus,



provisions of the two subject CSAs, considered in their entirety violate the basic intent of the foregoing rules.

(c) See (b) above.

(d) See Response to 2(c) above.

5. Do you contend that either BellSouth Contract Service Arrangement KY98-4958-00 or TN98-2766-00 is discriminatory? If so, please:

(a) identify the specific terms, conditions, or provisions of the CSA which you contend are discriminatory, if any;

(b) state all facts which support your contention that the CSA or any terms, conditions, or provisions contained therein are discriminatory; and

(c) identify and produce all documents which support your contention that the CSA or any terms, conditions, or provisions contained therein are discriminatory.

**RESPONSE:** This data request repeats No. 3, to which reference is made.

6. Have you ever provided or offered to provide Telecommunications Services in the state of Tennessee to the customer which is a party to CSA TN98-2766-00 or to an affiliate of that customer (See Appendix III of CSA TN98-2766-00 for a list of such affiliates)? If so, please:

(a) Identify each customer or affiliate to whom you have provided or offered Telecommunications Services;

(b) Identify the geographic locations served or offered to be served and the Telecommunications Services provided or offered;

(c) Identify the dates on which service was provided or offered and the dates service was discontinued, if applicable;

(d) State whether the service was provided or offered pursuant to AT&T's approved Tennessee tariffs or pursuant to one or more special contracts; and

(e) Identify and produce any proposals, special contracts or draft special contracts that are responsive to section (d) above.

**RESPONSE:** The customer in CSA TN98-2766-00 is not identified in the copy provided AT&T, but is redacted. Therefore, AT&T has no way of responding to this request.

7. Have you ever decided not to provide or offer Telecommunications Service in Tennessee to the customer which is a party to CSA TN98-2766-00 or to an affiliate of that customer because that customer or affiliate was subject to a CSA with BellSouth? If so, please:

(a) Identify the customer or affiliate that was involved;

(b) Identify the Telecommunications Services you would have provided or offered the customer or affiliate had the customer or affiliate not been subject to a CSA with BellSouth;

(c) Identify and produce all documents that refer or relate to your decision not to provide or offer to provide Telecommunications Service to the customer or affiliate because the customer or affiliate was subject to a CSA with BellSouth.

**RESPONSE:** See Response to No. 6 above.

8. If the customer which is a party to CSA TN98-2766-00 or an affiliate of that customer has ever declined any offer by you to provide Telecommunications Services in Tennessee, in whole or in part, because the customer or affiliate was subject to a CSA with BellSouth, please:

- (a) Identify the customer or affiliate that was involved;
- (b) identify the Telecommunications Services which you offered to provide the customer or affiliate and which the customer or affiliate declined, in whole or in part, because the customer or affiliate was subject to a CSA with BellSouth;
- (c) Identify the CSA with BellSouth to which the customer or affiliate was a party or to which the customer or affiliate otherwise was subject; and
- (d) Identify and produce all documents that refer or relate to the decision by the customer or affiliate to decline your offer to provide Telecommunications Service because the customer or affiliate was subject to a CSA with BellSouth.

**RESPONSE:** See Response to No. 6 above.

9. Have you ever provided or offered to provide Telecommunications Services in the state of Tennessee to the customer which is a party to CSA KY98-4958-00 or to an affiliate of that customer? If so, please:

- (a) Identify each customer or affiliate to whom you have provided or offered to provide such Telecommunications Services;

(b) Identify the geographic locations served or offered to be served and the Telecommunications Services provided or offered;

(c) Identify the dates on which service was provided or offered and the dates service was discontinued, if applicable;

(d) State whether the service was provided or offered pursuant to AT&T's approved Tennessee tariffs or pursuant to one or more special contracts; and

(e) Identify and produce any special contracts or draft special contracts that are responsive to section (d) above;

**RESPONSE:** The customer in CSA KY98-4958-00 is not identified in the copy furnished AT&T, but is redacted. Therefore, AT&T has no way of responding to this request.

10. Have you ever decided not to provide or offer to provide Telecommunications Service in Tennessee to the customer which is a party to CSA KY98-4958-00 or to an affiliate to that customer because that customer or affiliate was subject to a CSA with BellSouth? If so, please:

(a) Identify the customer or affiliate that was involved;

(b) Identify the Telecommunications Services you would have provided or offered the customer or affiliate had the customer or affiliate not been subject to a CSA with BellSouth;

(c) Identify and produce all documents that refer or relate to your decision not to provide or offer telecommunications Service to the customer or affiliate because the customer or affiliate was subject to a CSA with BellSouth.

**RESPONSE:** See Response to No. 9.

11. If the customer which is a party to CSA KY98-4958-00 or an affiliate of that customer has ever declined any offer by you to provide Telecommunications Services in Tennessee, in whole or in part, because the customer or affiliate was subject to a CSA with BellSouth, please:

- (a) Identify the customer or affiliate that was involved;
- (b) Identify the Telecommunications Services which you offered to provide the customer or affiliate and which the customer or affiliate declined, in whole or in part, because the customer or affiliate was subject to a CSA with BellSouth;
- (c) Identify the CSA with BellSouth to which the customer or affiliate was a party or to which the customer or affiliate otherwise was subject; and
- (c)(sic) Identify and produce all documents that refer or relate to the decision by the customer or affiliate to decline your offer to provide Telecommunications Service because the customer or affiliate was subject to a CSA with BellSouth.

**RESPONSE:** See Response to No. 10.

12. If you contend that any of the provisions of Section IX, Termination Liability, of either CSA TN98-2766-00 or CSA KY98-4958-00 are anticompetitive, please:

- (a) identify the specific provisions of Section IX which you contend are anticompetitive;
- (b) state in detail the factual and legal basis for your contention; and
- (c) identify and produce all documents which support your contention.

**RESPONSE:** This data request overlaps with No. 2, to which reference is made. In addition, AT&T contends that the termination liability provisions of both CSAs impose *in terrorem* penalties, designed not to provide BST with any proper compensation, but to preclude its customers from terminating their CSAs and doing business with other carriers.

(a) The termination liability provisions must be construed in their entirety, in the context of the entire agreement and BST's programs and policies.

(b) As a matter of general contract law, courts will not enforce penalty provisions in contracts, as distinguished from proper liquidated damages provisions. The termination liability provisions in both the subject CSAs are designed as punishment to the customer to preclude the customer from terminating the CSA and doing business with other carriers. The issue here, however, is not simply a matter of enforcing general contract law, it is also a matter of regulatory policy to carry out the powers of the TRA to prohibit anticompetitive and unduly discriminatory or preferential rates and practices. Thus, the termination liability provisions must be construed not only under general contract law, but more importantly, under the statutory policies of this State the enforcement of which is delegated to the TRA.

**NOTE:** The discussion of the specific provisions of the two CSAs requires consideration of the specific terms of those CSAs. Those specific terms appear to be subject to treatment as "Confidential" under the terms of the Protective Order. Therefore, that discussion is filed separately, under seal, as required by the Protective Order.

The effect of the termination liability provisions in the two CSAs, however, is the same. A penalty is imposed, in the form of piled-on termination charges to prevent the customer from choosing another carrier – to prevent competition for developing.

The termination liability provisions of the subject CSAs are a key aspect of implementing BST's program to forestall and preclude the development of competition.

(c) See Response to 2(c).

13. Please identify any person or entity which you contend is similarly situated to the customers which are parties to CSA KY98-4958-00 and TN98-2766-00 and which you contend were denied access to Telecommunications Services at rates, terms or conditions comparable to those set forth in CSA KY98-4958-00 or CSA TN98-2766-00. For each person or entity identified, please describe in detail the process or means by which you determined that such person or entity is "similarly situated."

**RESPONSE:** Neither customer is identified and there is no way for AT&T to answer this request. Moreover, even if the customers were identified, it would not be feasible for AT&T to attempt to identify similarly situated companies within the time available. In addition, the very facts of each of these CSAs demonstrate that the same services, which are available generally under BST's tariffs, are being offered to these two customers under greatly differing rates, terms and conditions. No reasonable basis has been shown by BST to justify such departure from its general tariffs.

14. If you contend that any price for any Telecommunications Services provided for in either CSA KY98-4958-00 or TN98-2766-00 violate the provisions of T.C.A. §65-5-208(c), please:

(a) identify each Telecommunications Service the price of which you contend violates T.C.A. §65-5-208(c);

(b) for each Telecommunications Service identified in response to (a), identify all elements that are essential elements utilized by Competing Telecommunications Service Providers and the rate you contend is applicable for each such element;

(c) for each Telecommunications Service identified in response to (a), identify all elements that you contend are competitive elements and the cost you contend is the total long-run incremental cost of each such element; and

(d) identify and produce all documents which support your response to this data request.

**RESPONSE:**

(a),(b),(c) This request is apparently based on the specific price floor aspect of T.C.A. §65-5-208(c) and not on the anticompetitive provisions of the last sentence of that subsection. At this time, AT&T does not have sufficient information to form a contention as to the price floor provision. However, the facts clearly show that BST's program of CSAs is an anticompetitive practice.

(d) See response to 2(c) above.



15. For each special contract to which AT&T is a party, please:

(a) Identify the time and manner by which you notified the Authority of the existence of the contract;

(b) Identify the time and manner by which you provided the Authority with a copy of the contract and/or a written summary of the contract's provisions;

(c) Identify all similarly situated person or entities to which you have made the contract available;

(d) Identify all persons or entities who have requested Telecommunications Services under the terms and conditions of any such contract and your response to that request; and

(e) Identify and produce documents related to each of you responses to this Data Request.

**RESPONSE:** AT&T objects to this request on the ground that it is clearly not related to the subject matter of this proceeding, which is limited specifically to the two BST CSAs.

16. Produce copies of all documents identified in response to these Data Requests.

**RESPONSE:** See Response to 2(c).



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Attorneys for AT&T Communications of the  
South Central States, Inc.

### CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that a copy of the foregoing Responses of AT&T Communications of the South Central States, Inc. to BellSouth Telecommunications, Inc.'s Data Requests has been served via hand delivery, facsimile or U. S. First Class mail, postage paid to the following counsel of record on this the 16th day of July, 1999.

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BellSouth Telecommunications, Inc.  
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Nashville, TN 37201-3300

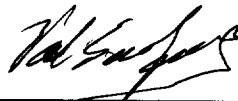
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